



**Main Identity**

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 To: "David Campos" <dcampos@muse.sfusd.edu>  
 Cc: <jwright@muse.sfusd.edu>; <whelges@muse.sfusd.edu>; "Nicole Sawaya" <nsawaya@poet.sfusd.edu>  
 Sent: Tuesday, April 03, 2001 7:37 PM  
 Subject: Draft Response to FCC

David,

Attached is our draft response to the FCC based on our discussions with Nicole Sawaya and Bill Helgeson. In the interests of speed, we are sharing this draft with everyone at the same time.

We look forward to talking with you Wednesday.

Best regards,

Ernie Sanchez

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DRAFT 4/3/2001

April x, 2001

Linda Blair, Chief  
 Audio Services Division  
 Mass Media Bureau  
 Federal Communications Commission  
 445 12th Street, S.W.  
 Washington, D.C. 20554

Re: KALW(FM), San Francisco, CA  
 Facility ID No. 58830  
 San Francisco Unified School District  
 File No. BRED-19970801YA

Federal Communications Commission	
Docket No. <u>3/16/01</u>	Exhibit No. <u>21</u>
Presented by <u>SFUSD</u>	
Disposition	Identified <u>3/16/01</u>
	Received <u>3/16/01</u>
	Rejected _____
Reporter <u>Gail Stedley</u>	
Date <u>3/16/01</u>	

Dear Ms. Blair:

This letter is filed on behalf of the San Francisco Unified School District ("SFUSD"), licensee of KALW(FM), San Francisco, CA, in response to the February 5, 2001 letter from the Audio Services Division of the Mass Media Bureau (hereafter, "MMB" or "Bureau"). That letter, a copy of which is enclosed for reference, requests that SFUSD provide responses to several questions regarding its public file. On March 7, 2001, SFUSD requested an additional 30 days, to and including April 6, 2001, in which to respond to the inquiries posed in that letter.

SFUSD Responses:

In general with respect to the following responses, SFUSD wishes to bring

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the following matters to the Bureau's attention. These matters are not extraneous to the Bureau's inquiries but, rather, are directly relevant to any question of whether deficiencies exist in the contents of KALW's public inspection file.

First, SFUSD requests that the Commission recall (as SFUSD reported at the time) that San Francisco's Loma Prieta earthquake in September 1989 almost entirely destroyed KALW's studio and offices. Budget constraints on the School Board prevented SFUSD from being able to repair or construct new facilities for KALW immediately. As a result, it was not until

\_\_\_\_\_ 1997 that KALW was finally moved to its present -- and permanent -- location at 500 Mansell Street. During the interim period, the KALW facilities were located in a variety of temporary headquarters, including the basketballs court of a high school gymnasium and a former locker room. All its files, including its public inspection files, were stored and transported in cardboard file boxes from and to each successive location. Since settling in the Mansell Street location, KALW's management has attempted to ascertain what was missing from the files and to restore them to the appropriate condition in compliance with the Commission's rules.

Second, KALW's public inspection file, until recently, was located in file cabinet a publicly-accessible location in its offices and was never locked, so that any station employee had access to those files.

Third, Golden Gate Public Radio ("GGPR"), the would-be petitioners who made these allegations against SFUSD, and its allies, are disgruntled employees and station volunteers. GGPR has not denied that it filed these allegations only after its attempt to extort SFUSD into assigning its license to GGPR was rebuffed. GGPR seemingly believes that it stands to benefit from any Commission sanction against SFUSD and thus has a strong incentive to remove documents from KALW's public inspection files. GGPR has not denied SFUSD's allegations that one or more of its members or allies illegally hacked into the SFUSD e-mail system and also removed documents from the personnel files of fellow employees.

#### Specific Responses:

1. Ownership/Supplemental Reports Inquiry: On August 1, 1997, when the subject license renewal application was filed, did the KALW(FM) public inspection files contain all of the ownership and supplemental reports required to be kept by then Section 73.3527?

Response: Yes. On August 1, 1997, the KALW(FM) public inspection file contained all of the ownership reports. SFUSD and the present management of KALW(FM) believe that all required supplemental reports were, in fact, present in the public inspection file on August 1, 1997. However, KALW is unable to prove that one particular supplemental report, which is believed to have been placed in the file in January 1995, was in fact present in the file on August 1, 1997.

a) Explanation. The public inspection file at the present time contains copies of ownership reports that were placed in that file when KALW's license renewals were filed, in July 1990 and in July 1997, respectively, as required by then-Section 73.3527 ( ) ( ). Both of these documents were

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present in the file on August 1, 1997. Several supplemental reports were also placed in the public inspection file during the interim period, to account for changes in SFUSD's governing board as a result of elections. SFUSD is governed by the San Francisco Board of Education, which consists of seven elected members and an appointed Superintendent of Schools. A School Board election is held every other year, at which time one-half of the Board (either 3 or 4 members) is up for election. Elections are held in November of evenly-numbered years, with new and re-elected Board members taking office when the Board holds its first meeting the following January. Thus, supplemental reports identifying new board members for the interim years of 1991, 1993, and 1995 should have been in the file on August 1, 1997.

At the time of KALW's 1997 renewal, Mr. Jeff Ramirez, the then-general manager of the station, certified that all required supplemental reports were present in the file. SFUSD and KALW's present management have no reason to disbelieve Mr. Ramirez' certification. When the present management reviewed the public inspection file in order to respond to this inquiry, it found supplemental reports for the years 1991, 1993, and 1995, reporting on election results of November of 1990, 1992, and 1994. While these three reports are all present in the file, the 1995 Report is dated December 10, 1997. Under the terms of then-Section 73.3527(a)( ) ( ), this supplemental report should have been placed in the file in January or February, 1995, that is, within 30 days after the newly-elected members of the School Board had taken office. It appears, therefore, that this particular report for the 1995 board changes was not placed in the public inspection file until December 1997. SFUSD stands by Mr. Ramirez' certification but is unable to prove today, nearly four years later, whether the supplemental report for 1995, bearing the correct January 1995 date, was in fact in the public inspection file as of August 1, 1997 (as Mr. Ramirez certified). SFUSD has no information that would indicate whether or by whom the original report might have been removed or misplaced, necessitating the creation of a replacement in December 1997. All that can be stated for certain at this time, many years later, is that the 1995 supplemental report that is in the file today bears the date December 10, 1997.

Additionally, the public inspection file does not presently contain a supplemental ownership report from January 1997. KALW's present management and SFUSD are unsure whether then-Section 73.3527 should be interpreted to have required the filing of a supplemental report in January 1997 with regard to the election results of November 1996, given that a full ownership report was scheduled to be filed (and, in fact, was filed) along with KALW's license renewal in August, 1997, and no change in Board membership occurred (or was anticipated to occur) between January and August of 1997. On the one hand, it would elevate form over substance to require an NCE station to file two reports, detailing the identical board composition, within a single year. If, on the other hand, the Commission takes the position that the former rule would have required both a supplemental and a regular ownership report for 1997, SFUSD will comply and prepare a supplemental ownership report on the election results of November 1996.

SFUSD does not believe that any sanction would be appropriate with respect to either the 1995 or, if required, 1997 supplemental reports, given the Commission's recognition that such reports were unduly burdensome on NCE licensees and were not particularly useful as a regulatory tool. The

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Commission, as of April 1, 2001, has abolished the supplemental report requirement, as a result of which NCE stations, like commercial stations, will only be required to file (and place in its public file) an ownership report every two years on its renewal anniversary date. CITE to RELEASE. In the Notice of Proposed Rulemaking that proposed this rule change, the Commission acknowledged that "relaxed [supplemental report] requirements would not adversely affect the Commission's ability to monitor ownership of . . . noncommercial educational broadcast stations" and pointed out that "Ownership Reports rarely generate challenges or complaints." Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes, MM Docket No. 98-43, 13 FCC Rcd 11349, 11380 (April 3, 1998). Furthermore, the Commission considered such supplemental reports to be particularly burdensome for NCE stations, stating that

" . . . the current ownership reporting requirements are stricter for noncommercial stations than for commercial stations. We believe that the supplemental reporting requirement . . . may be especially burdensome for noncommercial permittees and licensees. This requirement often serves to elicit information of less substantial changes for which prior Commission approval is not required."

In the case of a publicly-elected governing board such as San Francisco's, the concept of "ownership" of the station raises further questions regarding the need for supplemental reports. KALW(FM) is owned by the San Francisco public schools, whose governing board is elected by the citizens of San Francisco. Thus, it is inconceivable that "prior Commission approval" for changes in "ownership" that might result from public elections could be required. Furthermore, because they are elected public officials, the identity of the licensee's governing board is readily ascertainable by the public without the need to find that information in KALW's public files. Under these circumstances, it would elevate form over substance for the Commission to sanction KALW or its licensee with respect to when a particular supplemental ownership report was placed in its public file.

Copies of each ownership and supplemental report for the period in question are enclosed.

2. Issues/Program Lists/ First Inquiry: On August 1, 1997, did the KALW(FM) public inspection file contain all of the issues/program lists required by then Section 73.3527?

Response: Yes. SFUSD and the present management of KALW believe that its public inspection files, as of August 1, 1997, contained all of the issues/program lists for the entire period in question. Mr. Ramirez, who reviewed the contents of the file in July and August 1997 in connection with preparation of KALW's license renewal form, so certified at the time. Neither KALW's present management nor SFUSD has any reason to disbelieve that certification. Furthermore, according to information in the files of KALW's counsel, KALW station management again reviewed the public inspection files in January 1998 and reported to counsel, at that time, that the files were in order in accordance with a public file review check sheet published by

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National Public Radio for use by its members (a copy of which is enclosed).

However, when KALW's present management reviewed the issues/program lists file for the period in question in connection with this inquiry by the Bureau, they did not find any such lists in that file. Also missing from the file was the original of an issues/program list for the program City Visions for the last quarter of 1997. That list (a copy of which is enclosed) had been faxed to counsel in January 1998 prior to the original being placed in the issues/program list file. KALW's present management and SFUSD are unable to explain what may have happened to the missing lists.

Issues/Program Lists/Second Inquiry: Did any lists that were in the file contain information required by Section 73.3527?

Response: SFUSD and the present management of KALW(FM) believe that all lists in the issues/program lists file contained information required by then-Section 73.3527 but, as stated above, cannot presently account for the missing lists.

a) Details: A very large number of KALW's programs contain significant treatments of issues of importance in the San Francisco community. Series such as City Visions, which explores issues relating to health care, the environment, the economy and government in the Bay area), Your Legal Rights, AIDS Update, and Outright Radio, as well as many individual public affairs and documentary programs (including the Board of Education meetings which are broadcast live), provide significant treatment of public issues of great importance to the community, including but not limited to, the public education of its children. Although the present management of KALW was unable to find discrete specifically-prepared program lists, such as the attached list for the last quarter of 1997, for the period in question. What they found instead, however, for each quarter of the period in question, was a copy of KALW's quarterly program guide. The program guide provides all the required information regarding programs that provide significant treatment of issues of public importance during the quarter, including the time, date, title and duration of all such programs. Also included in this file, for each quarter in the period, are lists of issues of public importance that received significant treatment in programs provided to KALW by National Public Radio. SFUSD believes that all these materials were also present in the file on August 1, 1997 and that they constitute another basis for recognizing compliance with the requirements of then-Section 73.3527..

If the Commission insists, however, that KALW(FM) will not be considered in compliance with this rule unless it can either produce proof that specifically-created issues/program lists were in its public inspection file as of August 1, 1997 or, alternatively, unless it can re-create a full set of such lists for the period in question from the issues/program materials that remain in the file from that period, SFUSD will instruct the KALW staff to do so. In order to permit the Commission to determine whether its existing issues/program materials is sufficient, we have enclosed herewith a copy of a recent SFUSD program guide, as well as a representative example of the NPR issues/program lists. If the Commission decides that these materials do not comply with the format requirements of then-section

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73.3527(a)(7), or the present rule, SFUSD will ensure that the required information is recorded in that format and will provide copies of all such lists for the period .

3. Donor List Inquiry: On August 1, 1997, did the KALW(FM) public file contain a complete listing of donors supporting specific programs, as required by then Section 73.3527?

Response: Yes, to the limited extent that such donors existed. As a matter of policy and long-term practice, KALW does not solicit or accept underwriting support for specific programs. Rather, all underwriting funds are considered general support. If a particular underwriter requests that its underwriting announcement be aired during a particular day-part or program, KALW will honor that request. The underwriting funds in question are, nevertheless, not allocated to support for that program, or for any specific program, and underwriting funds are not solicited on the basis of support for specific programs. Therefore, as a general matter, KALW has no reason to file donor lists as required by Section 73.3527.

The only exception to this policy is with respect to a weekly program called Your Legal Rights, which is supported by donations from the San Francisco Bar Association and the State Bar of California as a public service to provide public information about lawyer referral services. To SFUSD's knowledge and belief, a listing of these donors, in connection with their support of this program, as required by then-Section 73.3527, was in the public inspection files on August 1, 1997.

4. Steps Taken to Correct Problems. The present General Manager and Operations Manager of KALW(FM) have completely reviewed KALW's public inspection file and made sure that it contained all required documents, reports, and information. To the extent that any replacement or corrected reports or information was required, such corrections have been made. Additionally, the public inspection file is now located in a more secure area, in the general manager's office, where its contents can be made available for inspection to members of the public who request access, but where unrestricted access and risk of future loss of documents can be prevented. The Operations Manager has been assigned responsibility for maintaining and keeping the public inspection files up-to-date. Copies of the Commission's public inspection file checklist and the NPR, NFCB and NAB compliance guides have been consulted in order to better educate staff regarding compliance.

5. Inquiry re Complete File: As of the date of this letter, is the KALW(FM) public inspection file now complete?

Response: Yes. As of the date of this response, KALW's public inspection file is now complete. The KALW(FM) public inspection file contained all required materials as of April xxxxx, 2001.

Sincerely yours,

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Ernest T. Sanchez  
Susan M. Jenkins  
Counsel for San Francisco Unified School District  
Licensee of KALW(FM)

cc. Jackie Wright, SFUSD  
Nicole Sawaya, General Manager, KALW(FM)  
David Campos, Esq., San Francisco City Attorney's Office

----- Original Message -----

From: "David Campos" <[dcampos@muse.sfusd.edu](mailto:dcampos@muse.sfusd.edu)>  
To: "Nicole Sawaya" <[nsawaya@poet.sfusd.edu](mailto:nsawaya@poet.sfusd.edu)>; <[esanchez@bellatlantic.net](mailto:esanchez@bellatlantic.net)>  
Cc: <[jwright@muse.sfusd.edu](mailto:jwright@muse.sfusd.edu)>; <[dcampos@muse.sfusd.edu](mailto:dcampos@muse.sfusd.edu)>;  
<[whelges@muse.sfusd.edu](mailto:whelges@muse.sfusd.edu)>  
Sent: Tuesday, April 03, 2001 5:14 PM  
Subject: Re: To Ernie and Susan

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Please forgive me if this has already happened or if this has already been  
discussed, but can I get a copy of the Draft.

Thank you very much.

David

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